



*From “Wetland Program Development Grants (WPDGs) Case Studies”  
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**The Environmental Law Institute:** *Reporting on the status of state wetland programs based on seven core elements: regulation, monitoring and assessment, restoration, water quality standards, public and private partnerships, coordination with state and federal agencies, and education and outreach*

## **Introduction**

The Environmental Law Institute (ELI) was incorporated in 1969 as a nonprofit organization to provide training, advice, seminars, publications, research, analysis, policy recommendations and other information to professionals in multiple sectors of environmental stewardship. ELI's Wetlands Program in particular provides information relating to wetlands law, science, policy, and management. ELI partners with several federal agencies in administering the National Wetlands Award Program, initiated in 1989, as a means of honoring individuals who demonstrate outstanding innovation or dedication in advancing one or more activities relating to improved wetland protection or restoration.

ELI also publishes the bimonthly National Wetlands Newsletter which reports on timely wetland issues that include best management practices, advancements in the field, pertinent court cases and federal agency activities to name a few. The articles are written by experts and made available in both print and web-based applications of the Newsletter. Since its inception, ELI has trained over 50,000 lawyers from several countries in environmental law and practice, defended sound wetlands regulations, and helped develop and refine policies relating to healthy schools, contaminated sites and biodiversity. These efforts represent just a few of the activities that make ELI a valuable resource to state and tribal wetland programs throughout the nation.

## **WPDG Activity**

In 2003, ELI was awarded a WPDG to develop Phase I of the State Wetland Program Evaluation, a report summarizing the status of state wetland programs. The program analysis was based on the following six EPA core elements of a comprehensive state/tribal program: regulation, monitoring and assessment, restoration, water quality standards, public and private partnerships, and coordination with state and federal agencies. In addition, ELI identified outreach and education as another important element of a comprehensive wetland program. ELI recognized that states utilized several different approaches in protecting wetland resources, including both regulatory and non-regulatory activities. They also realized that several factors, not limited to politics, economics, geography, state agency funding and resources, played a role in program differences.

Phase I of the study focused on examining the seven core wetland program elements in twelve states representing diverse approaches and overall state wetland program support: Arizona, Arkansas, Colorado, Georgia, Maine, Michigan, Missouri, New York, North Carolina, Ohio, Pennsylvania and Washington. ELI developed a methodology to minimize bias in the evaluation process. Initially, ELI conducted a thorough legal review of the state statutes and regulations

establishing and governing the state program. ELI staff gathered additional information using the Internet and other secondary sources. The rest of the data was gathered through phone interviews with state program staff and other individuals familiar with the program. ELI compiled narratives for each state, which were then reviewed for accuracy by state agency staff. Some key findings under five of the seven core elements are summarized below:\*

### ***Regulation***

- Eleven of the states included wetlands in their definition of state waters;
- Most states adopted a definition of wetlands similar to that of the Clean Water Act (CWA);
- All states used some derivation delineation methodology outlined by the U.S. Army Corps of Engineers;
- Several states relied on water quality laws to regulate wetlands as “waters of the state”;
- One state, Michigan, had assumed authority to administer permits under CWA §404;
- A quarter of the states evaluated have laws requiring local governments to adopt ordinances for wetland regulation and protection and/or incorporate planning criteria in established minimum standards;
- Most states administer their wetland programs and activities through two or more agencies;

### ***Monitoring and Assessment***

- Only one of the states maintained a formal wetland monitoring and assessment program;
- Several states were developing or had completed one or more wetland assessment methodologies;

### ***Restoration***

- Most states do not have formal wetland restoration programs beyond the scope of federal programs although states do engage in restoration-related activities;
- The state restoration programs that do exist are typically based on landowner stewardship;

### ***Water Quality Standards***

- Three states have adopted wetland-specific water quality standards;
- Seven of the states had not adopted wetland-specific water quality standards, anti-degradation policies or designated uses;

### ***Coordination with State and Federal Agencies***

- All states generally coordinated with agencies on activities related to permit applications and federal conservation and agricultural programs; and
- Five of the states were party to intrastate memoranda of agreement relating to wetland activities.

**\*Note:** Results are based solely on the twelve states evaluated in Phase I.

Findings in this report help gauge the progress of states toward developing comprehensive wetland programs. The thorough analysis of each core element allows states to identify target areas that may require further development in order to effectively protect wetland resources. States may decide to utilize the more successful activities for guidance in building their own wetland programs.

### **Current Work and Future Plans**

ELI is near completion of Phase II of their State Wetland Program Evaluation of twelve additional states: Florida, Hawaii, Montana, Nebraska, New Jersey, Oregon, Rhode Island, Texas, Utah, Vermont, West Virginia and Wisconsin. Eventually, ELI's program evaluation will be completed for all 50 states and ELI will publish a final report summarizing the major findings with possible comparative analysis. These reports not only help states assess their program's effectiveness, but also give a national perspective on the condition of wetland programs overall and their relative ability to protect wetland resources.

For more information about the Environmental Law Institute, please see the ELI website ([www.eli.org](http://www.eli.org)). To download a free copy of the Phase I evaluation, follow the link below: [http://www.elistore.org/reports\\_detail.asp?ID=11079](http://www.elistore.org/reports_detail.asp?ID=11079).